

## **REMARKS/ARGUMENTS**

The Restriction Requirement dated September 14, 2005 has been considered. The Examiner restricted the inventions as follows: Group I, claims 1-19 and 30-36; Group II, claims 20-29; and Group III, claims 37-48. Applicant hereby elects the claims of Group I, namely claims 1-19 and 30-36. Applicant respectfully traverses the restriction for the following reasons.

With reference to paragraph 2 on page 2 of the Restriction Requirement, the Examiner's basis for requiring restriction between invention I, claims 1-19, and II is that the subcombination could be used for manipulating the signal without separating out the cardiac signal. To support a requirement for restriction, the Examiner has the burden of showing (1) two-way distinctiveness and (2) providing reasons for insisting on restriction. In order to establish that combination and subcombination inventions are distinct, the Examiner has the burden of demonstrating two-way distinctiveness.

Applicant respectfully asserts that the Examiner has not satisfied the burden of suggesting a viable example of separate utility, but is merely advancing a hypothetical "separate utility" without foundation. Mere generic manipulation of a signal can not reasonably satisfy the requirement that the Examiner identify a viable example of separate utility.

With reference to paragraph 3 on page 3 of the Restriction Requirement, the Examiner's basis for requiring restriction between invention III and I, claims 1-19, is that the subcombination could be used for examining a cardiac signal continuously, instead of only during a specified time window. Applicant respectfully asserts that the Examiner has not satisfied the burden of suggesting a viable example of separate utility, but is merely identifying differences in claimed features.

With further reference to paragraph 3 of the Restriction Requirement, the Examiner contends that Inventions III and I, claims 1-19, are related as process and apparatus for its practice. Applicant respectfully submits that the claims of Invention III and I, claims 1-19 are method claims. For at least this reason, the requirement for restricting Inventions III and I is in error.

Concerning paragraph 4 on page 3 of the Restriction Requirement, the Examiner's basis for requiring restriction between the inventions of Group II and III is that the process could comprise detecting an electrical signal in a thoracic location. Applicant respectfully asserts that this basis is faulty, since the process claims of Group III expressly recite detecting an electrical signal at a subcutaneous location, which could include a thoracic location. For at least this reason, the requirement for restricting Inventions II and III is in error.

Applicant respectfully request withdrawal of the instant restriction requirement in view of the defects and deficiencies identified above.

Applicant traverses the Examiner's Restriction Requirement, and respectfully asserts that a sufficient showing of "distinctiveness" as is required to support the restriction of the Group I, II, and III claims has not established. Applicant, in traversing the Examiner's Restriction Requirement, is directing its arguments to the limited issue of the lack of proper grounds supporting the restriction of Applicant's claims for examination purposes. As such, Applicant's characterization of the claimed subject matter as it may pertain to the issue of distinctiveness or lack thereof within the context of restriction practice is not to be construed as an admission that the claimed inventions are obvious over each other within the meaning of 35 U.S.C. § 103.

**CONCLUSION**

In view of the above, the Applicant respectfully requests reconsideration and withdrawal of the requirement for restriction. If the Examiner would find it helpful to discuss this issue by telephone, the undersigned attorney of record invites the Examiner to contact the attorney of record.

Respectfully submitted,

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